

Section 25137-14 is adopted to read:

§ 25137-14. Mutual Fund Service Providers and Asset Management Service Providers.

NOTE: The 15-day changes are shown in underscore for additions and strikeout for deletions.

(a) Definitions.

As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

(1) "Administration services" include, but are not limited to, clerical, fund or shareholder accounting; participant record-keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal, and tax services performed for a regulated investment company. Services qualify as administration services only if the provider of such service or services during the taxable year also provides, or is affiliated with a person that provides, management or distribution services to the same regulated investment company during the same taxable year.

(2) "Distribution services" include, but are not limited to, the services of advertising, servicing, marketing or selling shares of a regulated investment company. The services of advertising, servicing or marketing shares qualify as distribution services only when the service is performed by a person who is, or in the case of a closed-end company was, either engaged in the business of selling regulated investment company shares or affiliated with a person that is engaged in the service of selling regulated investment company shares. In the case of an open-end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to 15 United States Code, Section 80a-15(b), as amended.

(3) "Management services" include, but are not limited to, the rendering of investment advice, directly or indirectly, to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of the regulated investment company or providing services related to the selling or purchasing of securities constituting assets of a regulated investment company, and related activities. Services qualify as management services only when such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to 15 United States Code, Section 80a-15(a), as amended, for a person that has entered into such a contract with the regulated investment company or for a person that is affiliated with a person that has entered into such a contract with a regulated investment company.

(4) "Domicile" is defined as follows:

(A) The domicile of a shareholder of a regulated investment company is presumed to be the shareholder's mailing address on the records of the

regulated investment company or the mutual fund service provider. If the regulated investment company or the mutual fund service provider has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, the presumption does not control. Shareholders of record that own shares for the benefit of others ~~are not individuals~~ are subject to the special rule contained in subsection (b)(1)(A)1 of this regulation.

(B) The domicile of a beneficial owner of assets managed by a mutual fund service provider shall be presumed to be the beneficiary's mailing address on the records of the entity for whom the asset management services are rendered, or on the records of the mutual fund service provider. If the entity for whom the asset management services are rendered, or the mutual fund service provider, has actual knowledge that the beneficiary's primary residence or principal place of business is different than the beneficiary's mailing address, the presumption does not control. Owners of record that are not the beneficial owner are subject to the special rule contained in subsection (b)(1)(B)1 of this regulation.

(5) "Mutual fund service provider" means any unitary business that derives income from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company.

(6) "Regulated Investment Company" means a regulated investment company as defined in Section 851 of the Internal Revenue Code.

(7) "Asset management services" means the direct or indirect provision of management, distribution or administrative services to entities other than regulated investment companies, if those services would be management, distribution or administrative services within the meaning of subparagraphs (a)(1), (a)(2), or (a)(3) of this regulation, if provided directly or indirectly to a regulated investment company.

(b) Apportionment of Business Income. The property, payroll and sales factors of the apportionment formula for mutual fund service providers shall be computed pursuant to Sections 25128 through 25137 of the Revenue and Taxation Code and the regulations adopted pursuant thereto, except as provided in this regulation:

(1) Sales Factor. For purposes of determining the numerator of the sales factor:

(A) Receipts from the direct or indirect provision of management, distribution or administration services to or on behalf of a regulated investment company are assigned by the use of a shareholder ratio. This ratio is calculated by multiplying total receipts for the taxable year from each separate regulated investment company for which the mutual fund service provider performs management, distribution or administration services by a fraction, the

numerator of which is the average of the number of shares owned by the regulated investment company's shareholders domiciled in ~~this~~ the State at the beginning of and at the end of the regulated investment company's taxable year, and the denominator of which is the average of the number of the shares owned by the regulated investment company's shareholders everywhere at the beginning of and at the end of the regulated investment company's taxable year.

1. If the domicile of a ~~given individual~~ shareholder is unknown to the mutual fund service provider because the shareholder of record is a person that holds the shares of a regulated investment company as depositor for the benefit of ~~a separate account~~ others, the mutual fund service provider may utilize any reasonable basis ~~derived from information that it receives from the shareholder of record~~, such as the zip codes of underlying shareholders, in order to determine the proper location for the assignment of these shares. If no information is available obtained such that a reasonable basis can be developed to determine the proper location for the assignment of these shares, from the shareholder of record, then all of the shares held by the shareholder of record shall be disregarded in computing the shareholder ratio for the fund in issue.

2. The regulated investment company's taxable year for computing the shareholder ratio shall be either the taxable year that ends during the taxable year of the principal member of the mutual fund service provider's combined reporting group or the taxable year of the principal member of the mutual fund service provider's combined reporting group. Once a method for computing the shareholder ratio is chosen, that methodology should be applied consistently in later years.

(B) If a mutual fund service provider has receipts from performing asset management services, in addition to performing services for regulated investment companies, these services shall be assigned to this state if the domicile of the ~~individual owning~~ beneficial owner of the assets is located in this state.

1. In the case of asset management services directly or indirectly provided to a pension plan, retirement account or institutional investor, such as private banks, national and international private investors, international traders or insurance companies, receipts shall be assigned to this State to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account or beneficiaries of the similar pool of assets held by the institutional investor, is in California. If the individual domiciles of the beneficiaries are not available, a mutual fund service provider may utilize any reasonable basis in order to determine the domiciles of the individual beneficiaries, including information based on zip codes or other statistical data.

2. In the event the domicile of the beneficiaries is not or cannot be obtained, and the taxpayer cannot devise a reasonable method to approximate this information statistically, the receipts shall be disregarded for purposes of the sales factor.

(C) If a mutual fund service provider has non-taxpayer members that are providing management, distribution or administration services to or on behalf of a regulated investment company with shareholders in this State, or that are providing asset management services directly or indirectly for beneficiaries who are domiciled in this State, the receipts from these activities that are assigned to the numerator of the sales factor by virtue of this regulation shall be included in the numerator of the sales factor in determining the unitary group's business income apportionable to this State, even though the specific entity that performed the services is not a taxpayer in this State.

1. In lieu of the provisions contained in Regulation section 25106.5(c)(7)(B), the taxpayer member's property, payroll and sales factors are calculated as follows:

a. Each taxpayer member of the combined reporting group (and only the taxpayer members) determines its California property factor, payroll factor and sales factor.

b. The taxpayer member's California property factor is a fraction, the numerator of which is the California property of that member, and the denominator of which is the total property of the group everywhere. Property values are determined in accordance with Sections 25130 and 25131 of the Revenue and Taxation Code.

c. The taxpayer member's California payroll factor is a fraction, the numerator of which is that member's California payroll, determined under Section 25133 of the Revenue and Taxation Code, and the denominator of which is the total payroll of the group everywhere.

d. The taxpayer member's California sales factor is a fraction, the numerator of which is the California sales of that taxpayer member, determined under sections 25133 through 25137 of the Revenue and Taxation Code and the regulations adopted pursuant thereto and as modified by this regulation, and the denominator of which is the total sales of the group everywhere.

2. In lieu of the provisions contained in Regulation section 25106.5(c)(7)(C), the taxpayer member's California source combined report business income is then calculated as follows:

a. First, the taxpayer's California apportionment percentage is determined. It is the sum of that member's California payroll, property, and a doubled weighted sales factor (or a single weighted sales factor, if applicable), with that sum divided by either four or three (as applicable).

b. Next, the taxpayer member determines its intrastate apportionment percentage. That percentage is the ratio of the taxpayer member's California apportionment percentage to the sum of all of the California taxpayer members' California apportionment percentages.

c. Finally, the taxpayer member multiplies the group's California source combined report business income by its intrastate apportionment percentage to arrive at the taxpayer member's California source combined report business income.

(D) If the shareholder ratio calculated under section (b)(1)(A) or asset management services assigned under (b)(1)(B) of this regulation assigns receipts to a state where no members of the mutual fund service provider's unitary group are taxable as defined in Section 25122, these receipts shall not be assigned to that state. Instead, these receipts shall be assigned to the location of the income producing activity that gave rise to the receipts, as determined under Revenue and Taxation Code section 25136.

(c) This regulation is applicable to taxable years beginning on or after January 1, 2007.

Note: Authority cited: Section 19503, Revenue and Taxation Code.
Reference: Section 25137, Revenue and Taxation Code.